Nos. 06-713 and 06-730

In The Supreme Court of the United States

WASHINGTON STATE GRANGE,

Petitioner,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.; WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, ET AL.; LIBERTARIAN PARTY OF WASHINGTON STATE, ET AL.,

Respondents.

STATE OF WASHINGTON, ET AL.,

Petitioners,

v.

WASHINGTON STATE REPUBLICAN PARTY, ET AL.; WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, ET AL.; LIBERTARIAN PARTY OF WASHINGTON STATE, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS WASHINGTON STATE REPUBLICAN PARTY, ET AL.

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QUESTIONS PRESENTED

May Washington State force the Republican Party to associate, on election ballots, the official Voters' Pamphlet and other State-mandated disclosures, with any candidate who self-selects the Republican Party as his "preference"?

May Washington State continue the same state conduct previously held to violate the federal Constitution and defeat the First Amendment right of the Republican Party to select its standard bearers, its "ambassadors to the general electorate," by making minor cosmetic changes to its election statutes?

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STATEMENT OF THE CASE

This case, once again, directly presents the question whether the First Amendment permits a state to re-define the scope of the Republican Party's association at the crucial moment of choosing the Party's standard bearers for the general election. Initiative 872 ("I-872") established a partisan primary that forces the Republican Party to be associated with any candidate seeking to use the Republican Party name to advance his candidacy, whether or not the Republican Party desires to associate with that candidate. I-872 also forces the Republican Party to have its standard bearers for the general election chosen by all voters, including supporters of rival parties. I-872's purpose was to alter the Republican Party message and messenger, in effect continuing Washington's prior, unconstitutional blanket primary by "restor[ing] the kind of choice that voters enjoyed for seventy years with the blanket primary." Official Voters' Pamphlet "Statement For" I-872, JA 407. *See also* "Yes on I-872" home page, JA 79. The following key features of the blanket primary were replicated by I-872:

	Former Blanket Primary	**I-872**
The Republican Party must nominate its candidates in the primary election.	WASH. REV. CODE § 29.30.095 (2002)	§ 7(2), JA 413
Voters can vote for any candidate for each office without limitation on party affiliation.	WASH. REV. CODE § 29.18.200 (2002)	§ 5, JA 412
Candidates are identified on the ballot by party affiliation.	WASH. REV. CODE § 29.30.020(3) (2002)	§ 4, JA 412; § 7(3), JA 414

The courts below held that the partisan primary established by I-872 violates the First Amendment. The district court held that I-872 is constitutionally indistinguishable from the partisan blanket primaries declared unconstitutional by this Court in *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000) ("*Jones*") and the Ninth Circuit in *Democratic Party of Wash. v. Reed*, 343 F.3d 1198 (9th Cir. 2003), *cert. denied*, 540 U.S. 1213, *cert. denied sub nom., Wash. State Grange v. Wash. State Democratic Party*, 541 U.S. 957 (2004) ("*Reed*"):

> In all constitutionally relevant respects, Initiative 872 is identical to the blanket primary invalidated in *Reed*: (1) Initiative 872 allows candidates to designate a party preference when filing for office, without participation or consent of the party; (2) requires that political party candidates be nominated in Washington's primary; (3) identifies candidates on the primary ballot with party preference; (4) allows voters to vote for any candidate for any office without regard to party preference; (5) allows the use of an open, consolidated primary ballot that is not limited by political party and allows crossover voting; and (6) advances candidates to the general election based on open, "blanket" voting.

Pet. App. 72a (footnote marker omitted).[1] The court held that I-872 was not a "nonpartisan blanket primary" under *Jones*, because I-872 continues to select political party nominees. Pet. App. 71a.

The district court also invalidated the candidate filing provisions of I-872 that forced the Republican Party to be

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[1] Citations to "Pet. App." are to the Appendix to the petition of the State of Washington.

associated on the ballot with any candidate who self-designates the Republican Party as representing of his beliefs and policies, holding the statute violated the Party's right of association under the First Amendment. Pet. App. 79a. Applying the same test as Washington courts, the court rejected petitioners' argument that the partisan features of I-872 could be severed from the remainder of the initiative. Pet. App. 89a. The court entered a permanent injunction against implementation of I-872.[2] Pet. App. 93a-96a.

The court of appeals affirmed, concluding that a candidate's ability to "self-identify with a particular party regardless of that party's willingness to be associated with that candidate" constituted a severe burden on the political parties' associational rights. Pet. App. 3a-4a. The court rejected petitioners' assertions that I-872 established a "nonpartisan" blanket primary because "[b]y including candidates' self-identified political party preferences on the primary ballot, Washington permits all voters to select individuals who may effectively become the parties' standard bearers in the general election." Pet. App. 19a.

The court of appeals noted that the State and Grange argued that I-872 did not severely burden the parties' associational rights and never "articulated any compelling state interest" that would justify a severe burden. Pet.

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[2] The district court did not reach the Republican Party's claim that I-872 violates the Equal Protection Clause, concluding that the initiative impliedly repealed other provisions of state law that enabled each minor party to prevent more than one candidate for each office to appear on the primary ballot under its party name. Pet. App. 80a-84a. The court also did not reach claims that I-872 unconstitutionally restricted political party access to the ballot. Pet. App. 84a. In addition, the court reserved ruling on the political parties' "as applied" challenge. Pet. App. 53a.

App. 30a. Any compelling interests that could be implied were essentially the same as those rejected in *Jones* and could be served through alternative, more narrowly tailored provisions. *Id.* Like the district court, the court of appeals applied Washington's severance test, concluding "it cannot reasonably be believed" that I-872 would have been adopted absent the pervasive partisan identification provisions. Pet. App. 32a. The court rejected petitioners' argument that Washington voters intended to convert Washington's state and federal offices to "nonpartisan." Pet. App. 32a-33a.

Historical Development of Washington's Partisan Primary System

Since statehood, Washington's legislative branch and most executive branch offices have been "partisan" offices.[3] At the time of statehood, candidates for partisan office in Washington were nominated by party caucus or convention. Since statehood, the printing and distribution of election ballots has been controlled by the State. *See* 1889-90 WASH. LAWS, ch. XIII, p. 405, § 15. Washington's first legislature authorized parties to nominate by convention or primary, and to establish requirements for voter participation in the primary over and above the prerequisites for voting in general. 1889-90 WASH. LAWS, ch. XIII, p. 400, § 2; pp. 419-22, §§ 1-4, 6.

In 1907, Washington enacted legislation requiring nomination of candidates for public office by public primary. The statute recognized that absent the primary law,

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[3] Until 1907, the state Supreme Court was also a partisan office. 1907 WASH. LAWS, ch. 209, § 4. The state Superintendent of Public Instruction is nonpartisan. WASH. REV. CODE § 29.30.085(2) (2002); I-872, § 4(2), JA 412.

a political party had the inherent power to nominate as it saw fit. Although the primary law limited that authority, it reserved to the political parties "the power to . . . perform all other functions inherent to such organizations, the same as though this act had not been passed: *Provided*, That in no instance shall any convention have the power to nominate any candidate to be voted for at any primary election." 1907 WASH. LAWS, ch. 209, § 22.

The 1907 primary law was challenged based on adding voting qualifications to those set forth in Washington's constitution. Washington's Supreme Court upheld the law because a voter could be required to declare his intention "to affiliate with the party whose ballot he demands . . . and . . . to support generally the candidates of that party." *State ex rel. Zent v. Nichols*, 97 P. 728, 731 (Wash. 1908). The affiliation requirement did not add voting qualifications because "it is not the purpose of the primary election law to elect officers. The purpose is to select candidates for office to be voted for at the general election. Being so, the qualifications of electors provided by the constitution for the general election can have no application thereto." *Id.*

In 1935, petitioner Grange sponsored an initiative to the legislature to implement a "blanket primary." The blanket primary allowed "all properly registered voters to vote for their choice at any primary election for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter." *History of the Blanket Primary in Washington*, http://secstate.wa.gov/elections/bp_history.aspx (last visited July 17, 2007). After adoption in 1935, Washington used the blanket primary until 2004.

In 2000, this Court invalidated California's blanket primary in *Jones*. Much of the evidence on the operation and effect of the blanket primary was drawn from Washington, including testimony that 25% of party voters cross over to another party's primary and that two-thirds to three-quarters of all voters split their ticket in the primary, selecting the Republican standard bearers in some races and the Democratic standard bearers in others. There was also substantial evidence introduced regarding the adulteration of political party message resulting from the blanket primary. *See Jones*, 530 U.S. at 578-580.

The Republican Party has adopted rules for the qualification of candidates to file under the Republican name and concerning participation of voters in nominating Republican candidates. The rules in effect at the time this litigation commenced require that any primary that "has the effect of nominating a candidate of the Republican Party" must be limited to Republican and unaffiliated voters, and prohibit crossover voting in the primary. Rule 1, JA 89. In the absence of a qualifying primary to nominate Republican candidates, the rules provide for a nominating convention. Rule 16, JA 95. Only candidates certified or nominated by the Republican Party are authorized to designate themselves as Republican candidates or appear as Republicans "on the election ballot or in other election documents." Rule 30, JA 102.

Following *Jones*, the Ninth Circuit struck down Washington's prior blanket primary in *Reed*. The State defended the primary, asserting that it was a nonpartisan blanket primary as described in *Jones*. The *Reed* court stated:

> As for the State of Washington's argument that the party nominees chosen at blanket primaries are the nominees not of the parties but of the

> electorate, that is the problem with the system, not a defense of it. Put simply, the blanket primary prevents a party from picking its nominees.

343 F.3d at 1204.[4] The Ninth Circuit held that "the Washington blanket primary system is materially indistinguishable from the California blanket primary system" held unconstitutional in *Jones*." *Id.*

In 2004, Washington's legislature adopted a "modified" blanket primary. E.S.B. 6453, 58th Leg., Reg. Sess. (Wash. 2004), JA 425-579. The bill included an alternate Montana-style open primary, to be effective if a court invalidated the modified blanket primary. JA 489. On April 1, 2004, Washington's governor partially vetoed the legislation, noting that the modified blanket primary would substantially restrict voter choice at the general election, in which voter participation was approximately double that of the primary election. JA 574-75. The governor also concluded that the "top two" component of the modified blanket primary would "effectively den[y] [minor parties] access to the general election ballot." JA 575. That same day, petitioner Grange issued a press release launching the campaign for I-872 "in response to Gov. Locke's partial veto of Engrossed Senate Bill 6453, which . . . would have put a top-two system in place." JA 798. The Grange described I-872 as instituting "a '*modified*' blanket primary system . . . in which *voters will not be restricted to choosing among the candidates of only one party* in a primary election." *Id.* (emphasis added).

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[4] In this case the State similarly asserts that "candidates who appear on the general election ballot are selected by the *voters at large*, not by the parties or by the voters as party members." JA 388 (emphasis in original).

SUMMARY OF ARGUMENT

Political parties have the First Amendment rights to define the scope of their political association, select their standard bearers for the general election, and exclude outsiders from that process. I-872's plain language violates those rights, declaring that every voter has a "fundamental right" to select party standard bearers "without any limitation based on party preference or affiliation, of either the voter or the candidate." I-872, § 3(3), JA 411. This Court rejected the "desire" to select standard bearers of a party to which a voter does not belong as a "right," ruling that it "falls far short of a constitutional right, if indeed it can even fairly be characterized as an interest," and provides no "basis for disregarding the First Amendment right to exclude." *Jones*, 530 U.S. at 573 n.5. I-872 further violates core rights of political association by forcibly associating the Republican Party on the State's election ballots with any candidate who self-selects the Republican Party as his "preference."

Washington's modified blanket primary unquestionably selects the Republican Party's standard bearers for the general election. It is the only partisan nomination process the State recognizes. JA 104-111. It forces the Republican Party to associate on the ballot with any candidate who seeks to appropriate the Party's name. I-872, § 4 (candidate name must be listed "in conjunction" with the Republican Party), JA 412. It forces the Republican Party to have its standard bearers selected by voters who do not share the party's policies or principles. *Id.*, § 5, JA 412.

Petitioners cannot avoid the real world association I-872 creates between candidates and the political party for which they express "preference." Washington defends I-872 as advancing the interests of voters who "may wish

to support a variety of candidates for different offices who may be *associated with two or more parties*." State Br. at 29-30 (emphasis added). The Grange likewise admits the connection between party and candidates: under I-872, "we could even see more *minor party candidates* for legislative offices." JA 66 (emphasis added). At the general election, "the voter might be presented with a choice . . . between two candidates *of the same political party*." JA 170 (emphasis added).

I-872 clearly intended to overrule the fundamental holding of *Jones* and constitutes nothing less than an effort at legislative nullification of this Court's First Amendment precedents. Its declaration of "legislative intent" even invokes the old, unconstitutional blanket primary as a system that "allow[s] the broadest possible participation in the primary election; . . . giving each voter a free choice among all candidates in the primary." I-872, § 2, JA 411. Referring to *Reed*, I-872 further states: "The Ninth Circuit Court of Appeals has threatened [the blanket primary] system through a decision, [sic] that, if not overturned by the United States Supreme Court, may require change." *Id.* In its press release announcing the I-872 campaign, the Grange explained that its "initiative will put a system in place which *looks almost identical* to the blanket primary system we've been using for nearly 70 years." JA 798 (emphasis added).

This Court has previously faced legislative sleight-of-hand in varied contexts: the "White primary" cases, a state statute that provided "information about candidate race," term limits, and declarations of secular purpose regarding religious instruction in public schools. In every instance, the Court rejected legislative evasion of constitutional protections, whether by functionally identical, racially

exclusive primaries or sham assertions of legislative purpose.

I-872, by both express intent and operation, selects the candidates who will carry the Republican Party's standard and message to Washington's voters in the general election. I-872 impermissibly shifts the ability to define the scope of the Republican Party's political association away from the Party to any candidate who wants to appropriate the Republican Party name to advance his candidacy, and to unaffiliated and rival-party voters. In each instance, I-872 violates the Party's First Amendment right to define the scope of its political association at the critical juncture of selecting its standard bearers for the general election. The rules adopted by the Republican Party governing candidate eligibility and prohibiting crossover and rival-party voting in the primary are designed to advance its policies and programs. This Court's precedents clearly prohibit a state from forcing inclusion of potentially adverse persons or messages in an expressive association.

ARGUMENT

1. Washington's modified blanket primary imposes a severe burden on core First Amendment rights of political association by denying the Republican Party the ability to define the scope of its political association at the critical juncture when its standard bearer for the general election is chosen.

The First Amendment protects "the freedom to join together in furtherance of common political beliefs, which necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association

to those people only." *Jones*, 530 U.S. at 574 (internal quotation marks and citations omitted). This freedom is an indispensable element of representative democracy. *Id.* From statehood, Washington's political parties have filled this critical role by promoting policies, recruiting candidates, and mobilizing voters. *See, e.g.*, CHARLES H. SHELDON, A CENTURY OF JUDGING: A POLITICAL HISTORY OF THE WASHINGTON SUPREME COURT 66 (Univ. Wash. Press 1988).

Selecting a candidate to advance a political party's program for governance is its fundamental purpose. This Court has consistently held that "the process by which a political party 'selects a standard bearer who best represents the party's ideologies and preferences,'" *Jones*, 530 U.S. at 575 (internal citation omitted), is "the 'basic function of a political party.'" *Id.* at 581 (internal citation omitted). "There is simply no substitute for a party's selecting its own candidates." *Id.* at 580-81. I-872 forces the Republican Party to associate on the primary and general election ballots with any candidate who expresses a "preference" for the Party, even when the Party may not "prefer" that candidate. *See* I-872, §§ 4, 7(3), 9(3), JA 412, 414-15.

This Court made clear that the First Amendment precludes a state from substituting its judgment for the party's in selecting the party's standard bearer for the general election.

> Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "selects a standard bearer who best represents the party's ideologies and preferences." *Eu*, 489 U.S. at 224 (internal quotation marks omitted). The moment of choosing the party's nominee, we have said, is "the

> crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian*, 479 U.S. at 216; *see also id.* at 235-236 (Scalia, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom"); *Timmons*, 520 U.S. at 359 ("The New Party, and not someone else, has the right to select the New Party's standard bearer" (internal quotation marks omitted)); *id.* at 371 (Stevens, J., dissenting) ("The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office").

Jones, 530 U.S. at 575-76.

A political party's candidate is its "ambassador to the general electorate in winning it over to the party's views." *Jones*, 530 U.S. at 575. The Republican Party's programs for governance may only be implemented by electing candidates who adhere to its principles and programs. This Court has also recognized the symbiosis between party positions and party candidates. The nomination "process often determines the party's positions on the most significant public policy issues of the day." *Id.* It is for those reasons that "[i]n no area is the political association's right to exclude more important than in the process of selecting its nominee." *Id.* "There is no question about the closeness of candidates to parties. . . ." *FEC v. Colo. Republican Fed. Campaign Comm'n*, 533 U.S. 431, 449 (2001).

Washington's modified blanket primary shares the same goal as California's blanket primary – changing the identity of the Republican Party's standard bearer, and thereby its message. The promoters of the California

blanket primary described it as a "a measure that would weaken party hard-liners and ease the way for moderate problem-solvers." *Jones*, 530 U.S. at 569 (internal quotation marks omitted). The Grange explained I-872's intent to change both the Republican message and messenger. I-872 would be

> more likely to produce public officials who represent the political preferences and opinions of a broad cross-section of the voters. Candidates will need to appeal to all the voters, partisan and independent alike. They will not be able to win the primary by appealing only to party activists. . . . The qualifying primary gives voters the kind of control that they exercised for seventy years under the blanket primary.

JA 78-79. The official Voters' Pamphlet confirmed that "[p]arties will have to recruit candidates with broad public support and run campaigns that appeal to all the voters," JA 406, and that "I-872 will restore the kind of choice in the primary that voters enjoyed for seventy years with the blanket primary." JA 407. These objectives do not justify the intrusion of I-872 on the freedom of political association to which the parties are entitled. The State has no business trying to promote candidates favored by the broad middle any more than promoting leftist or rightist candidacies. A party has a constitutional right to take positions or promote candidates that may be unpopular at the moment, but in which the party believes. *See Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 227-28 (1989).

The modified blanket primary is unconstitutional for the same reason as the blanket primaries in *Jones* and *Reed* – it deprives Republicans of control over the identities of their standard bearers and the content of their message.

a. I-872's modified blanket primary is a partisan primary that selects the Republican Party standard bearers for the general election.

I-872's modified blanket primary is expressly a partisan nominating process that selects the Republican Party standard bearers for the general election. I-872 is not the nonpartisan blanket primary discussed in *Jones* because it resolves intraparty competition in a state-mandated primary. The State has admitted that the modified blanket primary selects political party standard bearers, describing the presence of two self-designated Republicans in the general election as "politically interesting, both for Republicans and for Democrats (who have no standard bearer in such an election)." JA 392.

The State now argues that I-872 does not select party standard bearers in the general election because there may be two Republicans and no Democrats on the general election ballot. State Br. at 43. I-872 still nominates Republican standard bearers, even if in some races it may nominate two. There is no constitutional distinction between rival-party voters nominating one, two or more Republican candidates. Washington's constitution recognizes that a party may have more than one nominee for office. *See* WASH. CONST. art. II, § 15 (permitting the Republican Party to "*nominate*" three candidates to fill a vacancy in partisan office that had been held by a Republican).

Operationally, I-872 is indistinguishable from Washington's former blanket primary, as its sponsors intended. The sponsor announced that I-872 would "*preserve* [Washington's] primary system." JA 792 (emphasis added). It would look and operate much like the former blanket primary. JA 68-69, 77 (I-872 "establishes a qualifying primary which will give voters the freedom they enjoyed

under the blanket primary – to vote for any candidate they prefer for each office"). I-872 is not a nonpartisan blanket primary. It is the old, unconstitutional blanket primary repackaged with a different name, "[a]n old pattern in new guise." *Terry v. Adams*, 345 U.S. 461, 480 (1953) (Clark, J., concurring) (invalidating "Jaybird primary" which continued practice of excluding voters based on race).

Under Washington law, I-872 must be viewed in its statutory context. "A court's objective in construing a statute is to determine the legislature's intent." *Tingey v. Haisch*, 152 P.3d 1020, 1023 (Wash. 2007). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* (alteration in original) (internal quotation marks and citation omitted). Plain meaning is "discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* If the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory construction tools, including legislative history, for assistance in discerning legislative intent. *Id.*

Political party affiliation permeates I-872. Eight of its eighteen sections address candidates' "party preference" or affiliation. I-872, §§ 3, 4, 5, 7, 9, 11, 12, 15, JA 411-12, 414-15, 417, 419. The definition of "primary election" expressly recognizes that both candidates and voters have "party preference or affiliation." *Id.*, § 5, JA 412. The partisan identification selected by a candidate is "for the information of voters." *Id.*, § 7(3), JA 414. If a candidate selects the Republican Party as his "party preference," the Party name must appear "in conjunction with" the candidate on

both the primary and general election ballots. *Id.*, § 4, JA 412. The importance of the party affiliation features is buttressed by the State's emergency regulations that prohibit a candidate from changing "party preference" between the primary and general election. WASH. ADMIN. CODE 434-230-040 (2005), JA 601.

I-872 substitutes "preference" for "designation" in the candidate filing statute. *Id.*, § 9(3), JA 415. Petitioners contend that a candidate's "party preference" connotes no affiliation or association with a political party, but rather has a special, limited meaning. State Br. at 23-24; Grange Br. at 38-39. I-872 contradicts this assertion, recognizing that candidates elected as Republicans are "of" the Republican Party: "If a vacancy occurs in any legislative office . . . , the term of the successor who is *of the same party* as the incumbent may commence. . . ." I-872, § 15(2) (emphasis added), JA 419. The assertion that "party preference" has a special meaning is further undercut by I-872's use of "preference" interchangeably with "status" and "designation" in connection with "independent" candidates. *Compare id.*, § 7(3) ("independent preference") *with id.*, § 9(3) ("independent status"), § 11 ("independent status"), and § 12 ("independent designation"), JA 414-15, 417. "Where . . . a statute fails to define a term, rules of statutory construction require us to give the term its plain and ordinary meaning, which we derive from a standard dictionary if possible." *McClarty v. Totem Elec.*, 137 P.3d 841, 849-50 (Wash. 2006). The common, dictionary meaning of "preference" is "1a. The selecting of someone or something over another or others. b. The right or chance to so choose. c. Someone or something so chosen. See synonyms at choice." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). "Party preference" is "party selection" or "party choice" and is functionally

identical to "party designation."[5] The Grange itself treated the terms "preference" and "designation" as interchangeable and a continuation of past practice in its campaign for I-872: "[C]andidates will *continue* to express a political party *preference* when they file for office and that *designation* will appear on the ballot." JA 169 (emphasis added).

I-872's partisan primary was grafted onto a wider body of law under which "Republican" candidates are representatives of the Republican Party. For example, Washington's Constitution recognizes the association between successful Republican candidates and the Republican Party. It authorizes the Party to nominate the successors to public officers elected under the Republican banner:

> [T]he person appointed to fill the vacancy must be from . . . the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party. . . .

WASH. CONST. art. II, § 15. "Major political party" status depends "at least one nominee for president, vice president, United States senator, or a statewide office receiv[ing] at least five percent of the total vote cast." WASH. REV. CODE § 29A.04.086 (2006). A legislator's ability to raise campaign money depends, in part, on being one of the "members of a major political party in the state senate

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[5] Other election-related statutes use "preference" and "designation" as equivalents. *See, e.g.*, WASH. REV. CODE § 42.17.510(1) (2006) ("For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.").

or state house." WASH. REV. CODE § 42.17.020(10) (2006); *see also* WASH. REV. CODE § 42.17.640 (2006). Before the primary, local election officials are required to publish notice of the election, which must contain "the proper party designations" of the candidates. WASH. REV. CODE § 29A.52.311 (2006).

A candidate who appears on the general election ballot as a Republican is to the public, inevitably, the Party's standard bearer. It is immaterial that I-872 avoids using the terms "nominate" or "nominee." In *Jones*, the Court used interchangeably the phrases "selecting a candidate," "selecting a nominee," "selecting a standard bearer," and "choosing a leader." According to the State, I-872 does not "choose a party's nominee" because it separates "the process of choosing party candidates from the process of winnowing the field of candidates who can participate in the general election." State Br. at 30; *see also id.* at 38, 41. The initiative, however, is the only mechanism for "winnowing" the field of potential Republican standard bearers to the candidates who represent the Party and its programs to the electorate in November. State election officials admitted that under I-872, there is no "partisan nomination process separate from the primary." JA 104-11.

This case is not the first time the State has argued that Washington's primary election system is nonpartisan or does not select party nominees. It is the third, and the argument has been rejected both times before. In its *amicus curiae* brief before this Court in *Jones*, the State described "the winnowing of candidates for the general election" as the only "aspect of party associational activities affected by the blanket primary." Brief of the States of Washington & Alaska as *Amicus Curiae* in Support of Respondents, 1999 U.S. Briefs 401 at *10. In *Reed*, the

State argued that Washington's prior blanket primary was the nonpartisan primary of *Jones* and distinguishable from California's invalidated primary:

> First, California registers voters by party but Washington does not. Second, . . . because of its non-partisan registration, the winners of the primary "are the 'nominees' not of the parties but of the electorate." Thus, . . . its primary is a "*nonpartisan* blanket primary" that under *Jones* does not violate the parties' associational rights.

Reed, 343 F.3d at 1203 (internal citations omitted) (emphasis in original). The Ninth Circuit characterized these as "distinctions without a difference," *id.*, and observed:

> As for the State of Washington's argument that the party nominees chosen at blanket primaries "are the 'nominees' not of the parties but of the electorate," that is the problem with the system, not a defense of it. Put simply, the blanket primary prevents a party from picking its nominees.

343 F.3d at 1204 (internal citation omitted).

The modified blanket primary is a partisan nominating process that follows the former blanket primary in "prevent[ing] a party from picking its nominees." Voters of any political party, including those antagonistic to the Republican Party, remain free to vote for candidates identified as Republican on the ballot and determine which Republican candidates advance to the general election. This directly contravenes the Republican Party's rules, which limit participation in "any primary which has the effect of nominating a candidate of the Republican Party" to voters who affirmatively affiliate by requesting a Republican ballot. Rule 1, JA 89. I-872 authorizes opportunistic or hostile candidates to use the Republican Party

name to advance their candidacies, whether or not they share the principles of the Party.

The participation of hostile voters is the precursor harm. The greater harm is saddling the Republican Party with a standard bearer who does not share its values. "[A] single election in which the party nominee is selected by nonparty members could be enough to destroy the party. . . . Ordinarily, however, being saddled with an unwanted, and possibly antithetical, nominee would not destroy the party but severely transform it." *Jones*, 530 U.S. at 579.

b. Washington's candidate filing statute impermissibly shifts the ability to define the Republican Party's political association away from the Party to any candidate who chooses to associate the Republican Party with him on the ballot.

The modified blanket primary allows any candidate to declare himself a "Republican" and forces the Republican Party to associate with every candidate who wants to use the Republican Party name to advance his candidacy. *See* I-872, § 4, JA 412. The association of candidate and party under I-872 cannot be avoided by verbal sleight-of-hand – the State lists both real Republican candidates and those expressing a "preference" for the Party as Republicans. *Id.*, § 4 (primary and general election ballots), JA 412; § 11 (State Voters' Pamphlet), JA 417. The state attorney general's official description of I-872 makes no distinction between candidates expressing a "party preference" and "real" party candidates. They are all "party candidates": "The primary ballot would include . . . major party and minor party candidates and independents." JA 405. Under

Republican Party rules, only candidates certified to a qualifying party primary or candidates nominated by convention in the absence of a party primary may appear on the ballot or in election documents under the Republican Party's name. Rule 30, JA 102. Forced association between a candidate and the Party on official ballots or other publicly-funded election materials is no less a violation of the Party's First Amendment right to exclude than is forced association with voters.

It is essential that the Party be able to exclude candidates who are hostile or indifferent to its principles at the "moment of choosing the party's nominee, [which] is 'the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.'" *Jones*, 530 U.S. at 575 (internal citation omitted). Because the nominee "becomes the party's ambassador to the general electorate," a state's regulation of "the identity of the party's leaders . . . may . . . color the parties' message and interfere with the parties' decisions as to the best means to promote that message." *Jones*, 530 U.S. at 575, 579 (internal quotation marks and citation omitted).

This Court has repeatedly declared that a state cannot compel a group to associate with other speech or speakers. *See, e.g., Pacific Gas & Elec. Co. v. Pub. Util. Comm'n*, 475 U.S. 1 (1986); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000). *Pacific Gas* struck down California's requirement that a private company, which discussed political issues in newsletters sent with its monthly billing envelopes, provide access to its envelopes for a third party's political speech. A plurality of the Court stated that "[c]ompelled access . . . both

penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set." 475 U.S. at 9. California's order to disseminate the third-party's speech "in envelopes that [the company] owns and that bear [its] return address," *id.* at 18, forced "association with speech with which [the company] may disagree." *Id.* at 15.

In *Hurley*, Massachusetts asserted that its public accommodation law required a private parade organizer to include a gay, lesbian, and bisexual group in a St. Patrick's Day parade. The Court held that compelling the group's inclusion "violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message." 515 U.S. at 573.

Similarly, the Court ruled the Boy Scouts could not be forced to include a homosexual activist as an assistant scoutmaster in *Dale*. Giving deference to an association's view of what would impair its expression, the Court recognized that the activist's "presence in the Boy Scouts would . . . force the organization to send a message . . . that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior," 530 U.S. at 653, "a point of view contrary to its beliefs." *Id.* at 654.

"'Since *all* speech inherently involves choices of what to say and what to leave unsaid,' one important manifestation of the principle of free speech is that one who chooses to speak may also decide 'what not to say.'" *Hurley*, 515 U.S. at 573 (emphasis in original; internal citation omitted) (quoting *Pacific Gas*, 475 U.S. at 11, 16). I-872 compels the Republican Party to associate publicly with any candidate who "prefers" the Republican label. It thereby forces the Party to either alter its speech to distinguish

between "true" and "sham" Republican candidates or remain silent at the risk of losing control over its message. Because the Republican Party is "conjoined with" all "Republican" candidates, *see* I-872, § 4, JA 412, including those who do not share its core values, its autonomy to choose the content of its message is compromised. *See Hurley*, 515 U.S. at 576. I-872 impairs the efficacy of even the simplest messages to the Republican Party's core constituency, such as "Vote Republican," if the State lists two candidates on the general election ballot as "Republican." Furthermore, Washington law requires that all political advertising regarding partisan office identify the party of the candidate. WASH. REV. CODE § 42.17.510(1) (2006).[6] Republican Party speech disavowing a candidate who claimed a "preference" for the Republican Party would still have to identify that candidate as a "Republican."

The Court explained its compelled speech cases in *Rumsfeld v. Forum for Academic & Inst'l Rights*, 547 U.S. 47, 126 S. Ct. 1297 (2006). The "compelled-speech violation[s]" in *Hurley* and *Pacific Gas* "resulted from the fact that the complaining speaker's own message was affected by the speech it was forced to accommodate." *Rumsfeld*, 126 S. Ct. at 1309. The Court explained that in *Dale*, the Boy Scouts' First Amendment right of expressive association was violated by the forced inclusion of a leader whose "message" ran counter to that of the association. *See id.* at 1312. Similarly, forcing unwanted messages and messengers on the Republican Party by inclusion of sham or

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[6] The statute in effect at the time this lawsuit was filed provided, in relevant part: "The party with which a candidate files shall be clearly identified in political advertising for partisan office." WASH. REV. CODE § 42.17.510(1) (2004). The current statute became effective January 1, 2006. *See* S.B. 5034, 59th Leg., Reg. Sess. (Wash. 2005).

rejected Republican candidates impairs the Party's ability to define and promote its message.

None of this Court's prior decisions even hint that a candidate may invoke the First Amendment to hijack a party's name. Courts facing attempted hijackings by candidates have resoundingly affirmed a political party's right to determine who may – and who may not – associate with it. This Court recognizes that both states and parties may act to require pledges of support for a party from candidates seeking to affiliate with a party in a primary. "A state's *or a political party's exclusion of candidates from a party primary* because they will not pledge to support the party's nominees is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party." *Ray v. Blair*, 343 U.S. 214, 227 (1952) (emphasis added).

In *Duke v. Massey*, 87 F.3d 1226, *reh'g en banc denied*, 98 F.3d 1355 (11th Cir. 1996), David Duke expressly claimed a First Amendment right to associate with the Republican Party. The court upheld the Party's right to reject Duke as a candidate because Duke did not have "the right to associate with an 'unwilling partner'" and his "interests [did] not trump the Republican Party's right to identify its membership based on political beliefs." *Id.* at 1232-34. *See also Duke v. Cleland*, 954 F.2d 1526, 1531 (11th Cir.), *cert. denied*, 502 U.S. 1086 (1992) ("Duke has no right to associate with the Republican Party if the Republican Party has identified Duke as ideologically outside the party.").

In *LaRouche v. Fowler*, 152 F.3d 974 (D.C. Cir. 1998), the court described the severe burden that a forced association with candidates places upon a political party:

> [T]he Party's interest is not merely legitimate. Here, the associational rights of the Democratic National Party are at their zenith. The Party's ability to define who is a "bona fide Democrat" is nothing less than the Party's ability to define itself. . . .
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> * * *
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> . . . . By narrowing the field of those who represent it, the Party seeks to define its values, distinguish them from those of its competitors, and thereby attract like-minded voters. At the same time, it seeks to prevent confusion among those voters by excluding from its list of potential presidential nominees those who do not share those values. . . .
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> * * *
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> [The Party is not] required to accept LaRouche's selfdesignation [sic] as the final word on the matter. Rather, the Party's "freedom to join together in furtherance of common political beliefs 'necessarily presupposes the freedom to identify the people who constitute the association.'"

Id. at 995-97 (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986)). The underlying principle is mutuality of association.

LaRouche and the *Duke* cases are consistent with this Court's approach in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997) and *Clingman v. Beaver*, 544 U.S. 581 (2005). *Timmons* upheld Minnesota's law prohibiting an individual from appearing on the ballot as the candidate of more than one party. The Court noted that the New Party was free to try to persuade the candidate in question to run under its banner rather than associate on the ballot with another party. 520 U.S. at 360. However,

the New Party could not use the First Amendment to force an unreciprocated association with a candidate on official state ballots, where the candidate chose to be the nominee of a different party.[7] In *Clingman*, the Court ruled that voters who affirmatively affiliated with rival parties did not have a First Amendment right to vote in Libertarian primaries, unless they made their association mutual or at least were willing to forego their association with a rival party by declaring themselves independents. 540 U.S. at 592. *LaRouche* and the *Duke* cases simply apply the same principle to situations where a political party has chosen to associate with another candidate.

Washington has also recognized that candidates do not have an unlimited right to use any party name they please on the State's official ballots. *See State ex rel. LaFollette v. Hinkle*, 229 P. 317 (Wash. 1924) (enjoining State from printing names of candidates under "LaFollette State Party" name without the consent of LaFollette). The court of appeals adhered to these principles when it concluded that I-872's forced "association by the candidates against the will of the parties and their membership constitutes a severe burden on political parties' associational rights." Pet. App. 25a. A candidate who "prefers" the Republican Party is free to seek the

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[7] *Timmons* also rejected the argument now advanced by the Grange that non-Republican candidates have a "free speech" right to require the listing their party preference on the ballot. *See* Grange Br. at 19. Rejecting the New Party's claim of a right to use the ballot to express its general support for a candidate who was not its nominee, the Court stated that "[b]allots serve primarily to elect candidates, not as fora for political expression." 520 U.S. at 363. Under *Hurley*, the Republican Party *does* have a First Amendment right to keep the State of Washington from forcibly including outsiders marching under the Republican banner in the primary.

Republican nomination, but cannot appropriate the name if the Party selects another standard bearer.

This Court has acknowledged that "to the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise." *Tashjian*, 479 U.S. at 220. In *Rosen v. Brown*, 970 F.2d 169 (6th Cir. 1992), the Sixth Circuit struck down Ohio's election statute that prohibited non-party candidates from using the designation "Independent" next to their names on the ballot. The court relied in part on the value of party labels. *See id.* at 172-73. For example:

> [P]arty candidates are afforded a "voting cue" on the ballot in the form of a party label which research indicates is the most important determinant of voting behavior. Many voters do not know who the candidates are or who they will vote for until they enter the voting booth.

Id. at 172.

From statehood, party labels in Washington have implied "[a]dherence to certain principles and policies" and thus provided meaningful guidance to voters. SHELDON, *supra* at 67. The Grange admits the candidate's party preference creates a link between the candidate's message and that of the Republican Party. *See* Grange Br. at 21-22. The 1991 Louisiana gubernatorial election involving arch-segregationist David Duke, made infamous by the opposition's bumper sticker, "VOTE FOR THE CROOK: IT'S IMPORTANT," illustrates the association in the public's mind between candidates and the party whose name they

carry, whether the candidate is the party nominee or simply "prefers" that party.[8] *See* Michael Riley, *Louisiana: The No-Win Election,* TIME, Nov. 25, 1991, *available at* http://www.time.com/time/printout/0,8816,974345,00.html (last visited July 11, 2007). In this case, the State attempts to adulterate the "voting cue" provided to voters by allowing any candidate to appropriate the label "Republican," whether that candidate supports or opposes the political philosophy of the Republican Party and its adherents.[9]

The Republican Party name has meaning and electoral value:

> . . . Parties are known by names . . . which distinguish and differentiate the various parties in the public mind. The name "Democratic" is an important distinguishing mark of the party which carries that appellation, as "Republican" . . . [is] of [an]other similar large organized group[] of voters. Through custom and usage certain rights attach to the use of a party name and emblem.

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[8] Under Louisiana's form of a "top two" primary, when former Governor Edwards filed as a Democrat and a Republican congressman, the Republican governor, and arch-segregationist David Duke filed as Republicans, the crossover vote allowed Duke to edge out the two candidates supported by the Republican Party.

[9] The State's emergency regulations provide further evidence of the association established between candidate and party by party identification on the ballot. WASH. ADMIN. CODE § 434-230-040 (2005) prohibits a candidate from changing his "party preference" between the primary and general elections. JA 601. If the purpose of listing "party preference" is merely for the candidate to provide information to voters, voters should be made aware of any change in the candidate's preference, especially if the change occurs between the primary and general elections.

> It is a matter of common knowledge that in campaigns at general elections such terms as "Democrat," "Democrats" and "Democratic" have been used for such a length of time as to render their beginnings almost in "time out of memory" to connote the Democratic Party, its members and candidates. The same observation is equally true of "Republican," "Republicans" and "Republican Party."

Plonski v. Flynn, 222 N.Y.S.2d 542, 544-45 (1961) (quoting *Chambers v. Greenman Ass'n*, 58 N.Y.S.2d 637, 641 (1945)).

Washington recognizes "the right to the exclusive use of an established name" for non-commercial associations. *Most Worshipful Prince Hall Grand Lodge v. Most Worshipful Universal Grand Lodge*, 381 P.2d 130, 140 (Wash. 1963). "The underlying concept is that of unfair competition in matters in which the public generally may be deceived or misled." *Id.* at 135. Under *Grand Lodge*, the unauthorized use of a name that is identical to or indistinguishable from an established name causes confusion and diverts support from the legitimate organization. *Id.* at 136. Recognizing the value of party labels, I-872 acknowledges that candidates will be "trading" on the reputation and name of the Republican Party. It expressly states that party labels are "for the information of voters." I-872, § 7(3), JA 414. The "information" is no more and no less than an association of the candidate with the Republican Party's philosophy and positions.[10]

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[10] It is no defense that voters might be able to discern from other sources which candidates carrying the Republican Party name on state ballots are the Party's candidates and which have merely appropriated its name. Petitioners do not dispute the lower courts' conclusions

(Continued on following page)

The self-designation of candidates under I-872 coupled with the "top two" requirement also severely burdens the Republican party by creating an unreasonably high threshold for general election ballot access. In order to assure advancement to the general election under a "top two" primary, the Republican Party nominee must obtain more than one-third of the total primary vote. The actual required percentage for general election ballot access for any given primary for any given office will be a moving target.[11] The presence of multiple candidates, each listed as "Republican," poses a risk of voter confusion and dilutes support for the Party's nominee. The ability of candidates to unilaterally associate themselves with the Republican Party interferes with the Party's ability to marshal support for its nominee and finish in the top two.

The risk of vote-fracturing is real. In the only convention conducted before I-872 was declared unconstitutional, the unsuccessful candidate for the Republican nomination declared his intention to file as a Republican anyway.

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regarding the importance of candidates' ballot designations in electoral behavior. *See* State Br. at 48-49, Grange Br. at 19, 21-22 & n.4. This Court recently declined to make a sweeping assumption that voters possess great sophistication, noting that during the 2000 elections, 85% of surveyed voters could not name even a single candidate for the U.S. House of Representatives in their district. *See FEC v. Wisc. Right to Life, Inc.*, 168 L. Ed. 2d 329, 347 n.6 (2007). In contrast, party identification on the ballot has great impact on voter behavior: "Voting studies conducted since 1940 indicated that party identification is the single most important influence on political opinions and voting. . . . [T]he tendency to vote according to party loyalty increases as the voter moves down the ballot to lesser known candidates seeking lesser known offices at the state and local level." *Rosen*, 970 F.2d at 172.

[11] For example, in a primary with six candidates, who divide the vote approximately equally, general election ballot access could be obtained with approximately 17% of the total primary vote.

JA 362-63. In 1980, there was a large Republican field in the gubernatorial primary. The eventual governor, John Spellman, would not have appeared on the general election ballot had I-872 been in effect. Instead, two Democrats would have appeared on the general election ballot. JA 408-09.

The 1996 gubernatorial primary in which the Republican vote was widely fractured provides a more recent example of the potential consequences of I-872. JA 368. Although eight Republican candidates garnered nearly 48% of the total primary vote, the Republican nominee in the primary obtained only 15.26% of the vote, behind the top two Democratic candidates. JA 665. Under I-872, the Republican Party would have had no candidate in the general election. Likewise, the Republican Party would not have had a candidate for lieutenant governor on the 1996 general election ballot. The top Republican vote-getter received 19.43% of the primary vote, less than the top two Democratic candidates. *Id.* These percentages show substantial strength well above the "modicum" of support which states may require to obtain general election ballot access. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986). Should seven Republican candidates equally divide seventy percent of the primary vote and two Democrats evenly divide thirty percent, I-872 would place the two Democrats on the general election ballot.

Laws that create unreasonable obstacles to ballot access violate associational rights under the First Amendment. "Restrictions upon the access of political parties to the ballot impinge upon the rights of individuals to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively, and may not survive scrutiny under the First and Fourteenth Amendments."

Munro, 479 U.S. at 193 (approving Washington's former one percent ballot access requirement for party nominees) (internal citation omitted). Neither this Court nor any other federal court has approved a state law that requires a political party to obtain more than one-third of the vote to achieve access to the general election ballot.

The State's reliance on *Williams v. Rhodes*, 393 U.S. 23 (1968) and *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) as justification for the modified blanket primary is misplaced both in principle and practice. Those cases involve access to the general election ballot and state electoral systems that unreasonably limited general election ballot access. To the extent that *Williams* applies to I-872, it provides another ground to invalidate the primary. To be assured of a position on the general election ballot, a single candidate of *any* political party must garner more than one-third of the total votes cast at the primary. This Court struck down the ballot access threshold of 15% in *Williams* as unreasonable, where a party could rally behind a single candidate for each office. A general election ballot threshold of higher than 5% has never been approved. *See Jenness v. Fortson*, 403 U.S. 431 (1971). Had I-872 been in place from 1992 to 2002, the general election ballots in Washington would have had only one minor party candidate where two or more major party candidates filed for a position. JA 752.

c. The modified blanket primary forces the Republican Party to associate with rival party voters.

The First Amendment prohibits Washington from forcing a political party to associate with rival-party and unaffiliated voters in nominating its candidates. *See*

Jones, 530 U.S. at 574 ("Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.") (internal quotation marks and citation omitted). "In no area is the political association's right to exclude more important than in the process of selecting its nominee." *Id.* at 575.

Section 3(3) of I-872 declares it a "fundamental right" to choose which candidate will carry the Republican standard in the general election, regardless of the "party preference or affiliation of either the voter or the candidates.[12] JA 411. The Explanatory Statement in the official Voters' Pamphlet confirms that I-872 results in rival-party and unaffiliated voters selecting the Republican standard bearer: "Voters would be permitted to vote for any candidate for any office, and would not be limited to a single party." JA 405. As with the blanket primaries invalidated in *Jones* and *Reed*, the participation of these voters is intended to change the Republican candidate in the general election. The initiative sponsor's website stated that the modified blanket primary "should force the political parties to compete more effectively for these offices. . . . Under this initiative, parties should seek candidates with broad public support who can survive a competitive primary." JA 73. The sponsor explained that "[q]ualifying primaries are more likely to produce public officials who represent the political preferences and opinions of a broad cross-section of the voters. Candidates

[12] California's blanket primary also guaranteed the "right" to choose which candidates would carry their party standard in the general election "regardless of . . . political affiliation." CAL. ELEC. CODE § 2001 (1999), cited in *Jones*, 530 U.S. at 570.

will need to appeal to all the voters, partisan and independent alike. They will not be able to win the primary by appealing only to party activists." JA 78-79.[13] These points are echoed in the official Voters' Pamphlet. JA 406 ("Parties will have to recruit candidates with broad public support. . . . "). In *Jones*, this Court described this objective as "nothing more than a stark repudiation of freedom of political association." 530 U.S. at 582.

I-872's goal of adulterating the Republican message by making its candidates more like the general electorate, and less like Republican voters, is prohibited:

> In sum, Proposition 198 forces petitioners to adulterate their candidate-selection process . . . by opening it up to persons wholly unaffiliated with the party. Such forced association has the likely outcome – indeed, in this case the *intended* outcome – of changing the parties' message. We can think of no heavier burden on a political party's associational freedom.

Jones, 530 U.S. at 581-82 (emphasis in original); *see also id.* at 587 (Kennedy, J., concurring) ("The true purpose [of California's blanket primary] is to force a political party to accept a candidate it may not want, and, by so doing, to change the party's doctrinal position on major issues."). The State may not substitute its judgment for that of the Republican Party regarding the message it advances. *See Hurley*, 515 U.S. at 579 ("[T]he law . . . is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the

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[13] The initiative also unconstitutionally seeks to redirect the focus of minor political parties from high-profile statewide and federal offices to lower-level elected offices. JA 80.

government."); *Jones*, 530 U.S. at 587 (Kennedy, J., concurring) ("[Although a] political party might be better served by allowing blanket primaries as a means of nominating candidates with broader appeal . . . , this is an issue for the party to resolve, not for the State."); *Pacific Gas*, 475 U.S. at 20 ("Our cases establish that the State cannot advance some points of view by burdening the expression of others.").

The State analogizes I-872 to Washington's ballot access statute at issue in *Munro*. State Br. at 22, 38. In *Munro*, the Socialist Worker Party objected to the statutory requirement that its nominee, who was its sole candidate, receive one percent of the total vote cast in the primary in order to advance to the general election. Washington's applicable law expressly vested in the Socialist Workers Party exclusive authority to choose its nominee. *See* 479 U.S. at 191. Washington law also gave each minor party the right to prevent unauthorized use of its party name on the ballot. *See, e.g.*, WASH. REV. CODE § 29.24.045(2) (2002). Unlike I-872, primary voters were not presented with all candidates who wanted to run under the Socialist Workers Party standard, but rather only the single candidate nominated by the party. The intraparty competition had already been resolved.[14]

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[14] With respect to minor party candidates, Washington's old blanket primary might have operated as a type of "nonpartisan blanket primary." The minor parties nominated candidates by conventions of their adherents, and then had to show a modicum of support at the primary to advance to the general election. For them, Washington had "separat[ed] the nominating process from the winnowing process," State Br. at 38, but I-872 continues the primary's use to resolve intraparty competition.

2. Even if I-872 did not select the Republican Party's standard bearers for the general election, it severely burdens core First Amendment rights by reducing the right to nominate to a right to endorse.

Petitioners contend that under I-872, "voters do not choose a party's nominee," State Br. at 41, and "primary voters are not choosing any political party's nominee." Grange Br. at 31 (emphasis in original).[15] If this were true, I-872 still places a severe burden on the Party's "basic function" of choosing its own leaders.

A political party has the right to nominate under its own rules absent a valid state requirement of a primary to resolve the intraparty contest. *See, e.g., American Party v. White*, 415 U.S. 767, 781 (1974); *Ray*, 343 U.S. at 220-21. At statehood, Washington recognized this inherent power, *see* 1889-90 WASH. LAWS, ch. XIII, p. 419, §§ 2-3, and general election ballots reflected a candidate's party designation from the certificate of nomination filed by the political parties. *See id.*, p. 406, § 17. Washington did not

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[15] The Grange points repeatedly to emergency regulations (WASH. ADMIN. CODE § 434-262-012 (2005)) adopted by Washington's Secretary of State for the proposition that I-872 does not "serve" to nominate the Republican Party's candidates. The regulations, to the extent that they are even relevant to interpreting I-872, should be disregarded. The State rushed to adopt those regulations in anticipation of a challenge to I-872. "There are two reasons why the [Declaration of Candidacy] form needs to be finalized in such an expeditious manner. One, the form needs to be adopted by emergency WAC prior to the political party's lawsuits, which are expected to be filed first thing next week. . . ." Appendix to Republican Party Brief 4a. This Court has rightly rejected litigation positions masquerading as legitimate exercises of regulatory authority. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988) ("Deference to what appears to be nothing more than an agency's convenient litigating position would be entirely inappropriate.").

abolish the right to nominate when adopting its direct primary law in 1907. It merely required the Republican Party to determine its nominee through a public process.[16] From 1907 onward, the "nominee" of the Republican party chosen at the primary appeared on the general election ballot. *See, e.g.*, WASH. REV. CODE § 29.30.095 (2002).

The State maintains that I-872 "returns the relationship between the political parties and the state to what existed before the state required a party primary nominating process, and returns to the parties the ability to select their nominees however they choose." State Br. at 37. Both the State's pre-litigation interpretation of the statute and Washington's nomination process prior to 1907 contradict this claim. Following passage of I-872, the Republican Party notified state election officials that it would nominate Republican candidates by convention. JA 82-87. The election officials uniformly responded that there is no "language associated with the Initiative that contemplates a partisan nomination process separate from the primary." JA 104-11. Prior to the adoption of the direct primary in 1907, and in contrast to I-872, election officials ensured that political parties' nominees were properly certified to represent the parties. *See* 1889-90 WASH. LAWS, ch. XIII, pp. 400-04, §§ 3-10. I-872 even purports to strip Washington's political parties of the power to "perform all functions inherent in such an organization." I-872, § 14, JA 418.

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[16] The 1907 primary election law acknowledged nomination of candidates as one of the "functions inherent to [political parties], the same as though this act had not been passed: *Provided*, that in no instance shall any convention have the power to nominate any candidate to be voted for at any primary election." 1907 WASH. LAWS, ch. 209, § 22.

A state's ability to regulate the time, place and manner by which parties select their standard bearers is limited by the First Amendment right to associate. *See Eu*, 489 U.S. at 222. With no other effective mechanism for nominating candidates under I-872, intraparty competition among candidates who identify with the Republican Party is resolved at the primary. In essence, the modified blanket primary, like the primary invalidated in *Jones*, "has simply moved the general election one step earlier in the process, at the expense of the parties' ability to perform the 'basic function' of choosing their own leaders." *Jones*, 530 U.S. at 580 (internal citation omitted). Any "nomination" by the Republican Party under I-872 is functionally identical to a mere endorsement. The expression of a "preference" by the Republican Party among the identified Republicans on the primary ballot has the same effect as an expression of "preference" among the Republicans on the primary ballot by the Washington Grange.

> The ability of the party leadership to endorse a candidate is simply no substitute for the party members' ability to choose their own nominee. In *Eu*, we recognized that party-leadership endorsements are not always effective – for instance, in New York's 1982 gubernatorial primary, Edward Koch, the Democratic Party leadership's choice, lost out to Mario Cuomo.

Jones, 530 U.S. at 580.[17]

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[17] The Court specifically noted that a party's recommendations, even to its members in a closed primary, can be of limited value. *See Jones*, 530 U.S. at 580-81. I-872 does not restrict balloting for Republican identified candidates to Republicans, further reducing the utility of party "endorsement."

3. The State has no interest in forcibly associating the Republican Party with any candidate who seeks to use the Republican Party's name to advance a quest for public office and with non-affiliated or rival party voters.

Neither petitioner argues that I-872 serves a compelling state interest and is narrowly tailored to serve that interest. Nor did they advance that claim before the Court of Appeals. Pet. App. 30a. As a result, if I-872 severely burdens the Republican Party's First Amendment rights, no further discussion is needed. Even under a relaxed standard of testing constitutionality for state-imposed burdens that are not severe, however, I-872 fails.

a. The State's asserted interests in providing easy ballot access for candidates and in informing voters do not justify burdening the Republican Party's with messages and messengers the Party does not want.

It is up to an expressive association, not the State, to determine which messages or participants in the association would impair its message. *See Dale*, 530 U.S. at 653 ("As we give deference to an association's assertions regarding the nature of its expression, we must also give deference to an association's view of what would impair its expression."); *Hurley*, 515 U.S. at 575 ("[I]t boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control."); *Democratic Party v. Wisc. ex rel. La Follette*, 450 U.S. 107, 123-24 (1981) ("[A] State . . . may not constitutionally substitute its own judgment for that of the Party."). I-872 forces the Republican Party to include messages and speakers in its "parade" that may

be contrary to the message the Party wants to send. Contrary to the Grange's contention, Grange Br. at 36, the parade in question is not the "modified blanket primary," but rather the Republican Party itself, and I-872 forces association of the Republican Party and its message with candidates not of its choosing.

The State's claimed interest in providing "easy access to the ballot," State Br. at 30, could be accomplished without forcing the Republican Party to be associated with unwanted candidates. The State could guarantee access for independent and minor party candidacies,[18] which satisfies the First Amendment interests of both the candidate and voter. *See Duke v. Massey*, 87 F.3d at 1234 (" . . . Duke supporters do not have a First Amendment right to associate with him as a Republican Party presidential candidate. Duke's supporters were not foreclosed from supporting him as an independent candidate, or as a third party candidate in the general election.").

A state has no valid interest in placing information on the ballot for the purpose of influencing how voters use the franchise. Thus, Missouri's effort to influence voters by communicating whether a candidate supported or opposed term limits was prohibited. *See Cook v. Gralike*, 531 U.S. 510 (2001). Similarly, Louisiana's inclusion of a candidate's race on the ballot was also prohibited as an improper effort to promote race-based voting. *See Anderson v. Martin*, 375 U.S. 399 (1964). Printing a candidate's self-selected party preference,

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[18] Washington's present primary laws (also in effect immediately before adoption of I-872) provide guaranteed access to the general election ballot for both third party and independent candidates. *See* WASH. REV. CODE § 29A.20.121(1), (4) (2006).

where that preference is not reciprocated, is to provide that candidate with the electoral advantage that comes from association with a major political party.[19]

Petitioners do not dispute that the State will list on the ballot, with the Republican label, candidates for whom the Republican Party has no preference, the same as the State's listing of candidates who have been selected by the Party. Washington's Supreme Court has recognized that a nonprofit association has a protectable interest in its name and may prevent unauthorized use: "an established fraternal organization is entitled to relief when its name or one so similar as to be deceiving is adopted by another organization and used in a manner which is confusing and deceiving to the public and is detrimental to the organization already using the name." *Grand Lodge*, 381 P.2d at 135. The district court correctly concluded "that allowing any candidate, including those who may oppose party principles and goals, to appear on the ballot with a party designation will foster confusion and dilute the party's ability to rally support behind its candidates." Pet. App. 79a.

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[19] Washington's asserted interest in providing "information" to voters by listing candidates' "party preference" on the ballot could only possibly be satisfied if the "party preference" correctly reflects whether the candidate actually accepts the principles espoused by his preferred party. I-872's "party preference" provision, however, provides no more reliable information about a candidate's policies or positions than expressing a preference for the color "blue" on the ballot.

b. The State calls into question the primary systems of forty-nine other states by asserting that a constitutionally effective vote requires the ability to participate in selecting the standard bearers of multiple parties.

The State asserts that the right to cast an "effective vote" includes not being "limited to voting for the candidates of a single political party" at the primary. State Br. at 30. The claim contradicts this Court's conclusion that the right to cast an effective vote does not include selecting the standard bearer of a party to which the voter does not belong. *See Jones*, 530 U.S. at 583. It also calls into question the primary system of the forty-nine states that preclude a voter from casting an "effective vote" by limiting the voter to participation in a single primary.[20] "If the 'fundamental right' to cast a meaningful vote were really at issue in this context, [the blanket primary] would be not only constitutionally permissible but constitutionally required, which no one believes." *Id.* at 573 n.5. Under the State's formulation, not even the Republican Party's determination of its membership and association could prevail over the voter's right to cast an "effective vote."[21]

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[20] The District Court for the Northern District of Mississippi recently classified the primary election systems of all fifty states. *See Miss. State Democratic Party v. Barbour*, No. 4:06CV29-P-B, 2007 U.S. Dist. LEXIS 41908 at *24-*33 (E.D. Miss. June 8, 2007). Every state other than Washington (and Louisiana for state elections) limits voters to a single party's ballot for the primary election.

[21] The State also attempts to justify I-872 because it may advance some voters' "wish to associate with a minor party that has difficulty obtaining access to the primary ballot." State Br. at 29. In essence, the State asserts that by erecting obstacles to minor party ballot access, it can bootstrap its way to validating I-872's intrusion on the Republican Party's right to select its nominee. The State is wrong.

There would be no limiting construction on the State's conception of the right to cast an "effective vote."

The State's rule also has profound implications for the right of association outside the political primary context. It challenges any organization's right to determine the scope of its expressive association and shifts the right to define the make-up of the organization from the group to any individual who wishes to participate. *Contra Dale*. Under its rule, the State could decide that individuals could force parade organizers to include messages contrary to the message of the organizer's choice. *Contra Hurley*; *contra Pacific Gas*. At its base, the "right" to cast an "effective vote" by participating in selecting the messenger and message of a party to which a voter does not belong repudiates much of existing First Amendment jurisprudence, including both *Jones* and *Clingman*.[22]

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[22] *Amicus* State of Louisiana asserts that this Court's decision regarding Washington's primary should have no effect on the Louisiana system. The Court need not attempt to issue an advisory opinion on Louisiana law. First, Louisiana uses a "closed primary" to nominate candidates for Congress. *Amicus* Br. at 7. For state offices, Louisiana does not have a true primary election at all. Its "primary" is, by operation of law, a general election. The primary's status as a general election is what prompted this Court to hold that the Louisiana system violated federal law requiring a uniform election day for congressional offices. *Foster v. Love*, 522 U.S. 67, 72 (1997). Second, there is nothing in the record to indicate whether Louisiana's political parties have objected to, or have rules inconsistent with, its primary system. In the absence of any developed record or indication that Louisiana's system is in any way inconsistent with political party rules, or objectionable to Louisiana's political parties, the Court should not attempt to resolve the constitutionality of the Louisiana system. Third, under Louisiana law, the parties may collect an additional filing fee from candidates who seek to run under the respective party banners. LA. REV. STAT. ANN. § 18:464(C) (2007). To the extent that the parties accept fees from candidates, they may be said to have ratified an association with the candidate. Louisiana also permits candidates to appear on the ballot

(Continued on following page)

4. The State may not evade constitutional protections on core First Amendment rights by cosmetic changes to nomenclature, mere labels, and sham declarations of permitted legislative purpose.

I-872 makes cosmetic changes to Washington law in order to continue the same state conduct previously held to violate the First Amendment right of the Republican Party to select its standard bearers, its "ambassadors to the general electorate." Fundamental constitutional rights are not subject to legislative evasion, whether by serial evasion of rights under the Fourteenth and Fifteenth Amendments in the "White primary" cases, term limits for members of Congress, or sham declarations of secular purpose to avoid the Establishment Clause. If a state statute deprives persons of rights under the federal Constitution, it is invalid whether the deprivation is direct or indirect, "sophisticated [or] simple-minded." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995).

From 1927 to 1953, this Court repeatedly addressed Texas' efforts to defeat equal protection and the right to vote under the Fourteenth and Fifteenth Amendments. In *Nixon v. Herndon*, 273 U.S. 536 (1927), the Court struck down a Texas statute that explicitly barred African-Americans from voting in the Democratic primary. Texas promptly adopted a different primary law, transferring authority to determine voting qualifications to the

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under a party name based on signatures of voters, regardless of party affiliation and without allowing parties to collect an additional fee. *Id.* §§ 18:461(A)(1) & 18:465(D). Under *Jones*, that method of qualifying to appear on the ballot under a recognized party name may not survive constitutional scrutiny if contrary to the rules of a political party.

Democratic Party, which also barred African-Americans. Justice Cardozo noted that "[t]he result for [Nixon] is no different from what it was when his cause was here before. The argument for the respondents is, however, that identity of result has been attained through essential diversity of method." *Nixon v. Condon*, 286 U.S. 73, 83 (1932) (Cardozo, J., concurring). The Court declared the revised Texas primary statute unconstitutional. Texas then freed the Democratic Party from state oversight, leading again to the exclusion of African-American voters from the primary election and this Court's subsequent decision in *Smith v. Allwright*, 321 U.S. 649 (1944). In *Terry v. Adams*, 345 U.S. 461 (1953), the Court faced and invalidated yet another effort to evade compliance with the Constitution, in the form of the Jaybird Democratic Association. Concurring that the "Jaybird primary" violated the Constitution, Justice Clark noted that "[a]n old pattern in a new guise is revealed by the record." 345 U.S. at 480 (Clark, J., concurring).

The modified blanket primary is also an old pattern in a new guise. I-872 "will give voters the freedom they enjoyed under the blanket primary – to vote for any candidate they prefer for each office." JA 77. I-872 expressly declares a "right" to "cast a vote for any candidate . . . without any limitation based on party preference or affiliation, of either the voter or the candidate." I-872, § 3(3), JA 411.[23] This declaration directly contravenes a long line of First Amendment precedent summarized in *Jones*: "[A] nonmember's desire to participate in the

[23] Washington's former blanket primary granted the same "right" to vote for "any candidate for each office, regardless of political affiliation." WASH. REV. CODE § 29.18.200 (2002).

party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." 530 U.S. at 584 (internal quotation marks omitted).

In *U.S. Term Limits*, the Court noted that the name "U.S. Term Limits, Inc." implied the forbidden purpose of the state constitutional amendment: "[a] practical limit on the terms of the members of the Congress." 514 U.S. at 829 n.42. Here, the sponsor's website to promote I-872, "www.blanketprimary.org," JA 66, and its battle-cry, "I-872 – Preserve the blanket primary," JA 65, reveal what I-872 is: the old blanket primary repackaged.

The modified blanket primary also sought to achieve an identity of result through diversity of method. Petitioners assert that by substituting "preference" for "designation" in the filing statute, I-872 avoids the parties' First Amendment rights. *See* I-872, § 9(3), JA 415. However, the government "cannot foreclose the exercise of [First Amendment] rights by mere labels." *NAACP v. Button*, 371 U.S. 415, 429 (1963). I-872 still compels the Republican Party to be associated with candidates against its will, and to have unaffiliated and rival party voters select its "ambassador to the general electorate." *Jones*, 530 U.S. at 575.

Repeated assertions that voters are not selecting the party's nominee cannot alter the statute's purpose or effect. The purpose of a statute is determined "by drawing logical conclusions from its text, structure, and operation." *Nguyen v. INS*, 533 U.S. 53, 68 (2001). When evaluating the legislative purpose in a constitutional challenge, this Court can and does reach beyond the face of a statute. "While the Court is normally deferential to a State's articulation of . . . purpose, it is required that the

statement of such purpose be sincere and not a sham." *Edwards v. Aguillard*, 482 U.S. 578, 586-87 (1987) (declaration of secular purpose in requiring teaching of "creation science"). A court may find improper purpose behind a statute by examining the statute on its face, its legislative history, the historical context of the statute and the specific sequence of events leading to passage of the statute. *Id.* at 594-95. With I-872, the prohibited purpose is manifest in the statute itself, its context, and the sequence of events leading to its passage.[24]

The old blanket primary was declared unconstitutional. *See* I-872, § 2, JA 411. Washington's legislature passed a bill similar to I-872 that the governor vetoed, expressing both practical and constitutional concerns with that version of the modified blanket primary. JA 573-579. The replacement primary system adopted by Washington "gave the state party bosses more control over who appears on the general election ballot." Official Voters' Pamphlet "Statement For" I-872, JA 407. Petitioner Grange "opposes primaries in which voters are restricted to voting for candidates of only one party and does not want to see political parties gain control of the primary." JA 77. The Grange launched the I-872 campaign because "[w]e know that the voters of Washington overwhelmingly

[24] Even I-872's asserted purpose to increase voter choice and help third parties is suspect. The Court need give no deference to I-872's declaration of preserving voter choice where "the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975). The effective elimination from the general election of third parties altogether and even one of the major parties in areas where it may be weak does not protect "voter choice," which is a function of diverse voices at the general election. *See Sweezy v. New Hampshire*, 354 U.S. 234, 250-51 (1957).

support the blanket primary. . . . Through this initiative, we can continue to have all the benefits of the blanket primary system, including the right of a voter to pick any candidate for any office." JA 69-70. Under I-872, "[c]andidates for partisan offices would *continue* to identify a political party preference when they file for office, and that designation would appear on both the primary and general election ballots." JA 68 (emphasis added). State election officials were "not aware of any language associated with the Initiative that contemplates a partisan nomination process separate from the primary." JA 105, 107, 109, 111. Set against I-872's operative provisions and their explanation by the sponsor, conclusory assertions that primary voters are not determining the parties' nominees are contrary to fact and common sense.

5. The lower courts violated neither separation of powers nor principles of federalism when striking down an initiative that violated the First Amendment.

The Grange's assertion that principles of federalism justify I-872's invasion of core rights of political association because states should be free to be "laboratories" ignores the numerous decisions of this Court invalidating state experiments that tread upon the First Amendment, including the invalidation of California's experiment with the blanket primary. *See Jones*; *Hurley* (invalidating application of state anti-discrimination statute that impaired expressive association); *Dale* (same); *Cook* (state "experiment" providing voters with "information" intended to affect exercise of franchise). Declaring I-872 invalid was fully in accord with principles of federalism and the supremacy of the federal Constitution. *See* U.S. CONST.

art. VI, cl. 2. Principles of federalism did not justify Connecticut's invasion of core rights of political association in *Tashjian* because the state's ability to regulate elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." 408 U.S. at 217.

Similarly, neither lower court violated the separation of powers by declaring I-872 invalid. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is"). The Grange's reliance on *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006) is misplaced. This Court noted: "Our ability to devise a judicial remedy that does not entail quintessentially legislative work often depends on how clearly we have already articulated the background constitutional rules at issue and how easily we can articulate the remedy." *Id.* at 329. The Court has very clearly articulated the "background constitutional rules at issue":

- "The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights." *Tashjian*, 479 U.S. at 217.
- "The ability of the party leadership to endorse a candidate is simply no substitute for the party members' ability to choose their own nominee." *Jones*, 530 U.S. at 580.
- Political parties have the right to "identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122.
- "[W]hen dissemination of a view contrary to one's own is forced upon a speaker intimately connected with the communication

advanced, the speaker's right to autonomy over the message is compromised." *Hurley*, 551 U.S. at 576.

- Candidates carrying the party standard are "the party's ambassador to the general electorate in winning it over to the party's views." *Jones*, 530 U.S. at 575.
- There is "no heavier burden on a political party's associational freedom" than forcing it to associate with nonmembers and rivals at the point of selecting its standard bearer. *Jones*, 530 U.S. at 582.

The remedy is also easily articulated. The district court enjoined the State from implementing the initiative, and the court of appeals affirmed the permanent injunction.

I-872 by its terms, intent, and operation impaired the Republican Party's First Amendment rights, and both lower courts acted squarely within the powers of the judicial branch in declaring it unconstitutional.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

Respectfully submitted.

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APPENDIX

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Plaintiff Intervenors,

vs.

DEAN LOGAN, King County Records & Elections Division Manager, et al.,

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE, et al.,

Defendant Intervenors.

NO. CV05-0927-TSZ

DECLARATION OF KEVIN B. HANSEN

NOTE ON MOTION CALENDAR: WEDNESDAY, JULY 13, 2005

WITH ORAL ARGUMENT

KEVIN B. HANSEN declares under penalty of perjury under the laws of the State of Washington and the United States of America as follows:

1. I am one of the attorneys for the plaintiffs in this lawsuit, am competent to testify, and make this declaration of my own personal knowledge.

. . . .

4. Attached hereto as Exhibit 3 are true and correct copies of the following pages of the documents received from the Secretary: 7, 11, 30, 41, 158-59, 228-29, 231, 302-03, 381-82, 453, 467-69, 583, and 728.

SIGNED this 23rd day of June, 2005 in Kirkland, Washington.

/s/ Kevin B. Hansen
KEVIN B. HANSEN

EXHIBIT 3
to
Declaration of
Kevin B. Hansen

From: Cervantes, Amber

Sent: Friday, May 13, 2005 4:54 PM

To: [Recipients' names omitted]

Cc: Elections – All

Subject: Declaration of Candidacy

Dear Election Administrators,

Attached is the Declaration of Candidacy Form including instructions. They have been revised to reflect the suggestions made at conference. We are going to have the forms reprinted. The office of the PDC plans to have them out in the mail to you by the end of May/beginning of June.

Please review the form and instructions and provide any suggestions for change to me by 3:00 pm on Monday, May 16.

There are two reasons that the form needs to be finalized in such an expeditious manner. One, the form needs to be adopted by emergency WAC prior to the political party's [sic] lawsuits, which are expected to be filed first thing next week. And two, the form needs to get to the printer so that the PDC has plenty of time to get the forms out to the counties.

Thank you and have a great weekend.

Amber Cervantes
Office of the Secretary of State
Certification and Training Program
360.902.4165
acervantes@secstate.wa.gov

[Additional Pages Omitted]